

## April 7, 2006: Testimony by Felice D. Gaer, Vice Chair

Members Briefing on

Anti-Conversion Laws and Religious Freedom in South Asia and the Middle East:

The Case of Abdul Rahman

Before the Congressional Human Rights Caucus

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Mr. Chairman and distinguished Members of the Caucus, thank you for the opportunity to testify before you today at this important briefing. I will summarize the Commission's testimony in my oral remarks, but request that my full written statement be included in the record.

The Rahman Case: Afghanistan

In August 2003, the U.S. Commission on International Religious Freedom traveled to Afghanistan. During this visit, the country was in the process of finalizing its new constitution. In Kabul, I personally asked Afghanistan's Supreme Court Chief Justice, Fazl Hadi Shinwari, to describe his views on the compatibility of the Universal Declaration of Human Rights with Islam. He responded that there was complete compatibility, with three exceptions: in his view, there is a problem with freedom of expression because there is no right to commit blasphemy; there is a problem with freedom of religion because there is no right for a Muslim to change religion; and there is no equality between men and women because each have different rights and duties in Islam. Just two weeks ago, President Karzai reappointed Mr. Shinwari for the second time to the post of Chief Justice.

Today, almost three years after the Commission's visit, Afghanistan's interpretation of Islamic law trumping human rights standards remain in the news. The case of Abdul Rahman, an Afghan citizen who was charged with the crime of rejecting Islam, made headlines around the world. The prosecutor in Rahman's case labeled the defendant "a microbe [who] should be cut off and removed from the rest of Muslim society and should be killed." The judge overseeing the trial publicly affirmed that if Rahman did not return to Islam, "the punishment will be enforced on him, and the punishment is death."

As suggested by my discussion with Chief Justice Shinwari, Abdul Rahman's case should come as no surprise. In fact, his case is not an isolated incident. In 2002, formal blasphemy charges were filed against then-Minister of Women's Affairs, Dr. Sima Samar; in 2004, Chief Justice Shinwari personally led the effort to disqualify a presidential election candidate for purportedly "anti-Islamic" remarks; and most recently, in October 2005, Ali Mohaqiq Nasab, editor of an Afghan journal promoting women's rights, was arrested on charges of blasphemy and "insulting Islam" on the order of Afghanistan's Attorney General. Mr. Nasab's purported "crime" was to question the use of amputation and public stoning, cruel and abusive punishments sanctioned by pre-modern rules of Islamic law (sharia).

Clearly, Abdul Rahman's case points to the weak state of human rights protections in Afghanistan today, and reminds us that freedom and democracy are still very much in peril. The release of Rahman and of other persons cited above in no way confronts the underlying flaws in Afghanistan's governmental structure. Unless changes are made, cases such as Rahman's will continue to be treated in Afghanistan as criminal acts meriting the most severe punishments.

The unwavering influence of extremist elements in Kabul has impeded Afghanistan's political development. Five years after the Taliban regime, Islamic law governs Afghanistan at the expense of universal human rights. Despite U.S. and international involvement in its development, the country's new post-Taliban constitution does not serve as a strong enough countervailing force to protect human rights.

Although it refers to the requirement to "abide by" international treaties and the Universal Declaration of Human Rights, Afghanistan's constitution:

- has no explicit guarantee of the right of individuals to freedom of conscience, religion, or belief;
- permits other basic rights - such as the right to life and free expression - to be trumped by ordinary legislation;
- proclaims that "no law can be contrary to the beliefs and provisions of the sacred religion of Islam"; and
- provides, in Article 130, that courts apply Islamic law to cases before it when there is no other provision in the Constitution or statutory law on point.

Finally, Afghanistan's criminal code, a carry-over from prior regimes, states that hudood offenses, which typically include blasphemy and apostasy, "shall be punished in accordance with the provisions of Islamic religious law."

This legal framework suggests that Islamic laws (sharia) preempts civil law, and relegates international human rights standards more or less to the status of unenforceable principles. Individual judges are empowered to hand down rulings and mete out punishment based on their own interpretation of sharia. Afghanistan's constitution also requires Supreme Court judges to swear an oath "to support justice and righteousness in accord with the provisions of the sacred religion of Islam" and allows for the appointment of judges to the High Court based solely on "higher education in...Islamic jurisprudence."

The U.S. Commission on International Religious Freedom has concluded that because the United States has been so directly involved in Afghanistan's political reconstruction, it has a special obligation to act vigorously, together with the Karzai government, to identify and promptly remedy the systemic flaws which continue to undermine the protection of universal human rights in Afghanistan.

The Commission recommends that the U.S. government take the following steps to promote democratic governance that ensures human rights protections in Afghanistan:

- Direct measurable, concrete support and benefits - including improved, country-wide security - to the Afghan people. This will, in turn, enable the Karzai government and other moderates to make the hard choices necessary to oppose religious extremism.
- Amplify the voices of political reformers and human rights defenders by, among other things, encouraging President Karzai to appoint independent human rights defenders to the country's independent national human rights commission.
- Encourage President Karzai to appoint judges who understand-and who will uphold-international human rights standards, and to replace those judges trained only in religious law.
- Strengthen efforts to reform the judicial system, including sorely needed infrastructure and training for judges and prosecutors in civil law and human rights. Among other thing, the international community should work with the Karzai government and the Afghan legislature to bring the criminal laws into line with international standards when addressing alleged acts of apostasy and blasphemy.

Without taking these concrete steps, the possibilities are great for the official imposition on Afghans of a harsh, unfair, and even abusive interpretation of religious orthodoxy. This would effectively return Afghanistan to the conditions from which the United States ostensibly liberated it, and place in jeopardy everything that the United States has sought to accomplish there-the goals in support of which many American men and women have given their lives.

#### The Rahman Case: Broader Implications

Mr. Chairman, the case of Abdul Rahman has broader implications for U.S. policy concerning freedom of thought, conscience, religion or belief. I would like to make three points in that regard.

#### Restrictions on Conversion in Law and Practice

First, restrictions on the freedom to change religion occur in several countries in law and in practice. The freedom to change, or to adopt, a religion or belief is clearly protected in international human rights law. There is a diversity of views and practices among Muslim jurists and countries on the temporal penalty for apostasy, if any.

Nevertheless, several predominantly Muslim countries have laws that make conversion from Islam a crime. Death sentences and life imprisonment for this act have been carried out in Iran, Saudi Arabia, Sudan, and lesser penalties have been identified elsewhere. In addition to criminal penalties, some states deny certain civil rights to those who are considered to be apostates, including the dissolution of marriages, interference with child custody, inheritance, and property decisions, as well as difficulties in obtaining crucial identity documents which are necessary to engage in basic economic and social transactions.

In Iran, several Baha'is and Christians have been charged with apostasy over the years and numerous death sentences have been handed down and carried out. However, some of these sentences have either been commuted or reduced after those convicted had already served several years in prison. Most recently, in December 2005, a Baha'i who was

convicted of apostasy and sentenced to death in Iran in 1996 died under mysterious circumstances and unknown causes after serving more than 10 years in prison. Even individuals who are born as Baha'is can be implicated by apostasy laws because, in the state's view, Baha'is claim to a valid religious revelation subsequent to that of the Prophet Muhammad.

In Saudi Arabia, the last known case of an individual who was executed on apostasy charges was in 1992; nevertheless, apostasy charges continue to be applied, although they are typically reduced to blasphemy or lesser charges in most cases. Such cases send an ominous message to others who may be vulnerable to similar charges, or simply feel threatened that they may be imposed at will.

In its investigations, the Commission has also been made aware of negative societal responses to religious conversion that can lead to harassment and violence, to the point of having to flee from one's home or even the country itself. The recent visit of Commissioners to Sudan provided a number of firsthand examples of such pressures, which can chill the freedom of members of minority religious communities as well as potential adherents of minority faiths. Inevitably, governments bear a responsibility in these cases for not providing adequate protection to individuals under threat for their religious beliefs.

Conversion can be a very sensitive issue between religious communities, and many traditional societies have little experience with conversion. This is all the more reason why governments should vigorously protect the freedom of the individual to choose his or her religion or belief, including safeguards against assaults or threats that may be community or society-driven.

### The Broader Context: Protection for the Right to Dissent

The second major point is that restrictions on the freedom to change religion should be viewed in a broader context than religious worship alone. In many countries, the state fails to acknowledge or to protect the right of the individual to dissent from the prevailing religious and political orthodoxy. The Commission reviewed the constitutions of 44 predominantly Muslim countries and found that in many self-proclaimed Islamic states, the rights to freedom of religion and expression, where articulated at all, were outlined as communal or group rights and were not expressed in terms of the rights of the individual. In these cases, individual Muslims are ironically themselves denied religious freedom and risk being subject to a tyranny of a minority from their own faith.

Criminal charges of apostasy, blasphemy, and so-called "injury to religious feelings" are used in some of these countries to suppress religious practices that are considered inconsistent with the prevailing view of the dominant religion.

Such charges are also used to suppress discussion and debate and silence dissidents. Promoters of political and human rights reforms, as well as those seeking to debate the appropriate role for religion in the state, in its laws, and in society are typically the target of such charges. In addition to Afghanistan, we have seen this pattern occur in Iran, Saudi Arabia, Sudan, and Pakistan.

For example, the last person executed in Sudan for apostasy in 1985 was not a convert to another religion. Rather, it was a public figure who justified his political and religious reforms in his understanding of Islam, an understanding that conflicted sharply with that of the government.

More recent examples are from Iran and Saudi Arabia. In the past few years in Iran, independent newspapers and magazines have been closed, and leading publishers and journalists were imprisoned on charges of "insulting Islam" or questioning "the Islamic foundation of the Republic." Prominent dissident Shi'a clerics and Sunni imams have been charged, prosecuted, and sentenced to lengthy prison terms on similar charges.

In Saudi Arabia, charges of blasphemy continue to be used by the Saudi authorities against Muslim reformers and those members of minority Muslim groups, such as Sufis and Ismailis, who are considered to be non-conforming "deviant sects" by the Saudi government. In a recent case, a Muslim high school chemistry teacher, labeled by the prosecution as an apostate, was charged with blasphemy and sentenced to more than three years in prison and 750 lashes for talking to his students about his views on Christianity, Judaism, and the causes of terrorism. Moreover, Ismailis in the Najran region are regularly charged with practicing "sorcery" and "witchcraft" as a pretext to stifle their private religious practice.

Pakistan's notoriously abused anti-blasphemy laws have targeted, in addition to non-Muslims and members of the Ahmadi community, those Muslims who espouse views about Islam that are seen as unacceptable by certain segments of the Pakistani religious establishment.

Protection of the right of individuals to dissent on religious matters is also extremely important for women. The way religious law is interpreted and enforced can affect every aspect of women's lives and causes serious violations of their human rights, including the right to life. On this basis, women are subject to discriminatory criminal punishments and evidentiary rules in court, arbitrary punishment for perceived moral transgressions, and to limitations on freedom of movement and other personal choices. Anti-apostasy rules in particular prohibit women from choosing to opt out of discriminatory personal status laws which restrict their rights to divorce, inheritance, and child custody on an equal basis with men.

As in the case of Afghanistan, strong protections for the right of individuals - Muslim or non-Muslim - to oppose and dissent from prevailing orthodoxies are a prerequisite to democratic political development. In terms of U.S. policy to promote democracy and human rights in the Muslim world, these protections should be vigorously advocated and the United States should lead the international community in speaking out when this right is violated; the work of those defending this right should be supported wherever possible.

### Tension Between Application of Islamic Law and Protection for Human Rights

The third implication of Mr. Rahman's case is that it points out the unresolved tension in certain Muslim countries between the application of Islamic law and protections for human rights.

This tension exists in both law and practice. Of 44 predominantly Muslim countries that the Commission reviewed in its study, 15 provide that Islamic law or principles are a source of, or a limitation on, general legislation. In the vast majority of these cases, however, no constitutional guidance is given on how legislation should be assessed against Islamic principles, or how conflicts between Islamic principles and constitutional protections for human rights should be resolved. In practice, these remain open questions in several countries that are important to U.S. interests, countries like Iraq, Egypt, and Pakistan where the U.S. has encouraged greater movement toward democracy yet serious human rights violations persist.

## Conclusion

Mr. Chairman, the Universal Declaration of Human Rights clearly affirms the freedom of every individual to change his or her religion or belief. The International Covenant on Civil and Political Rights protects the freedom to adopt a religion or belief. International experts entrusted with the interpretation of freedom of religion, including Abdelfattah Amor of Tunisia, the former UN Special Rapporteur on freedom of religion or belief, have consistently affirmed that the freedom to adopt a religion is the freedom to change religion. This universal freedom should be guaranteed everywhere, and the United States should stand with all who seek to protect it. As President Bush has said, freedom is a universal norm and the United States should not shy away from expressing the desire for there to be universal liberty.